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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,411	08/15/2003	Bruce Downing	04006.00011	1474

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EXAMINER
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UNDERWOOD, DONALD W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/642,411

Applicant(s)

DOWNING, BRUCE

Examiner

Donald Underwood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12/06/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Detailed Action**

1. The drawing is objected to under 37 CFR 1.83(a) as failing to show and label skids (claim 1, note the lead line for numeral 230 in figure 2a is incorrect), a channel in the lower portion of the front of the bucket (claim 3), loops (claim 10), and braces (claim 13). In addition the lead line for 312 in figure 3a is incorrect. It should denote the vertical skid adapter.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It is unclear what structure comprises the lip. There is no lip referenced in the disclosure.

It is unclear what structure comprises the channel and how the pourer portion and the channel are related. It appears the pourer portion either forms the channel or applicant is using the word channel to denote the opening between the pourer portion and the bucket. If the former is correct the claims comprise a double inclusion of structure but if the latter is correct the use of the word channel is a misnomer. The word opening or passage should be used instead of the word channel.

It is unclear how the braces are constructed or where they are located.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, "the lip", newly added, lacks a clear antecedent basis rendering the claim indefinite. Moreover the specification is silent regarding a lip.

Regarding claim 8, "the cut of the conical section" lacks a clear antecedent basis rendering the claim indefinite.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 5, 6 and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pettersson.

Note the front edge of 18 is a lip and the angled panel forming the front of the skid adaptor and extending 45 degree downwardly from 18 comprises a pourer portion.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-7, 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deye in view of Pettersson or Gesuale.

Note 10 in Deye is synonymous with the claimed bucket and 60 is synonymous with the pourer portion, or the back, bottom and sides of 10 are synonymous with the claimed bucket and the front wall and 60 are synonymous with the pourer portion. The lip of the bucket would be the bucket edges to which the pourer structure is attached.

It would have been obvious to provide either horizontal or vertical skid receivers on the container in Deye for use with skids in view of the teaching in Pettersson or Gesuale.

Regarding claims 9 and 10, the sections in beams 12 comprising opening 16 (figure 2 in Gesuale) are synonymous with the claimed loops.

10. Applicant's position regarding the objection to the drawing has been carefully considered but is not deemed persuasive since the first sentence in 37 CFR 1.83(a) reads as follows: "The drawing in a nonprovisional application must show every feature of the invention specified in the claims."

11. Applicant's position regarding the 35 USC 112 rejections has been carefully considered but is not deemed persuasive. The provisions of 35 USC 112 can not be waived.

12. Applicant's position regarding the 35 USC 102 rejection has been carefully considered but is not deemed persuasive since the pourer portion as set forth in claims

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1, 5, 6 and 12 is met by Pettersson. Applicant appears to be reading limitations of his pourer portion as set forth in the detailed disclosure into the claims.

13. Applicant's position regarding the 35 USC 103 has been carefully considered but is not deemed persuasive. The Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressed articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971), references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA) 1969. In this case, both teaching references teach the use of skid adapters on a bucket to permit the bucket to be manipulated by a loader comprising skids. It is this teaching that provides the motivation to modify the device in Deye as set forth in the rejection.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication should be directed to D. Underwood at telephone number 703-308-1112.

Underwood/vs  
February 15, 2005

*Donald W. Underwood 02/17/05*  
**DONALD W. UNDERWOOD**  
**PRIMARY EXAMINER**